

THE EFFECTIVE DATE OF THIS ORDINANCE IS November 30, 2006

ORDINANCE NO. 66-43-439

AN ORDINANCE TO AMEND AND REVISE CERTAIN PROVISIONS OF THE ZONING
ORDINANCE OF FREDERICK COUNTY, MARYLAND, CODIFIED IN CHAPTER 1-19 OF
THE FREDERICK COUNTY CODE, 2004

RECITALS

The Board of County Commissioners of Frederick County, Maryland held a duly advertised public hearing on proposed revisions and amendments to the Frederick County Zoning Ordinance on November 14, 2006, at which time the public had an opportunity to comment on the proposed revisions and amendments. Pursuant to Section 1-19-60-64, after receiving public comments and having received a recommendation from the Frederick County Planning Commission, the Board of County Commissioners deems the amendments to the Zoning Ordinance, as such amendments are set forth in this Ordinance, to be in the best interests of the citizens of Frederick County and consistent with the general intent of the Zoning Ordinance.

NOW, THEREFORE, be it enacted and ordained by the Board of County Commissioners for Frederick County, Maryland, that:

- I. A new Section 1-19-333 is added as follows:

Sec. 1-19-333. Transit Oriented Development District (TOD)

(I) *Purpose and Objectives of the Transit Oriented Development District*

- (A) The Transit Oriented Development District (TOD) is a floating zone which is established for the purpose of providing for the development and redevelopment of available parcels of land located up to one quarter (1/4) of a mile from a MARC Train Station. The goal of the TOD district is to create compact development which encourages pedestrian access to MARC train stations. The TOD district should provide for a compatible mixture of office, general business/retail and high-density residential use oriented in such a way that it is defined by the transit facility, in terms of parking, density and building orientation. It shall not be enough to be adjacent to transit.
- (B) An appropriate mixture of uses can be realized in the TOD district through the development and redevelopment of more than one parcel within the overlay zone which may not be present in any one development proposal. During the Phase I approval process, the Board of County Commissioners may determine that the most efficient and appropriate development for a

particular parcel, within the TOD district contributes toward the achievement of the goals and objectives of the district. A mixture of uses is not required if it is determined by the Board of County Commissioners at the Phase I stage that the most efficient and appropriate development for a particular parcel is achieved by the development of only one type of use (i.e., commercial, office or residential). The emphasis of the TOD district will be on high-density residential development, with supporting or other office/commercial uses, to take advantage of the proximity to the MARC Station and to reduce dependence on highway commuting. The minimum density of any proposed development or redevelopment must be consistent with Smart Growth guidelines of 3.5 dwelling units per acre. Any proposed development or redevelopment must also include: an integration of local transit services; public pedestrian thoroughways to and from the transit station;

(C) Objectives for this district include:

- (1) Allowing for the construction of high-density residential development in close proximity to a MARC Train Station and to encourage pedestrian access from living quarters to the train station for purpose of commuting, thereby reducing reliance on highway and other vehicular commuting, and achieving resulting benefits to highway congestion and the environment.
- (2) Promote active, well-defined places near MARC train stations, so as to create amenities for existing transit riders and provide ancillary or support commercial/office uses to complement the residential development, and to further provide larger destination office/commercial uses in proximity to the MARC Station, where deemed appropriate.
- (3) Generate new ridership by maximizing residential density and use of vertical multifamily construction in areas located in close proximity to a MARC Station, with particular preference given to those locations that are also located in reasonable proximity to commercial/retail centers.
- (4) Allowing flexibility for development and design, including increasing building heights and allowing flexibility, as determined by the Planning Commission, on building setbacks and other design guidelines.
- (5) Leverage of the public investments in transit to achieve community goals.

(II) *Location*

- (A) The TOD district shall be located only on parcels located within one quarter (1/4) of a mile of a MARC Train Station. The floating TOD district zone may be approved by the Board of County Commissioners for any parcel located up to one quarter (1/4) of a mile from a MARC Train Station, notwithstanding the current zoning or comprehensive land use plan designation for such parcel. For purposes of this section, a parcel shall be deemed to be located within one quarter (1/4) of a mile from a MARC Train Station if more than 50% of the entirety of any such parcel is located within such distance. Any new lots subdivided from a parcel which meets the requirements of this subsection shall also be deemed to meet the proximity requirements set forth herein.
- (B) Preference shall be given by the Board of County Commissioners to parcels that apply for TOD district approval which are also located within reasonable proximity, particularly with pedestrian access, to a commercial/retail center.

(III) *Size Requirement*

- (A) There shall be no minimum parcel size for a proposed TOD district.
- (B) Tracts of land eligible for the TOD district will be one or more contiguous tracts of land under the ownership or control of a single developer or owner, or two or more contiguous tracts of land owned by two or more owners if such owners have filed for the TOD district under a joint application.
- (C) All setback, buffer area and right of way requirements for the different land uses within the TOD shall be determined by the Planning Commission with consideration given to applicable standards for similar uses in existing zoning districts. In viewing an application and proposed setback and other requirements, the Planning Commission shall give broad consideration to the objective of the TOD district of maximizing residential density in the vicinity of the MARC Station, and shall, where supported by valid design consideration, grant the requested setbacks and other requested standards provided there is no material detrimental effect on the public health, safety or welfare. Efficiency of land use is paramount in design consideration for a TOD project. There will be no minimum lot areas or lot widths required within the TOD.
- (D) Building heights within a TOD district shall be permitted by right up to three stories of leaseable/livable space. The Planning Commission in its discretion may permit taller residential multifamily structures during Phase II approval.

(IV) *Permitted Land Uses*

(A) The following land uses are permitted by right within a TOD district:

- (1) **Residential:** All residential housing types are permitted, but an emphasis will be placed on vertical density and efficient use of land.
- (2) **Commercial Uses:** All uses permitted in the General Commercial and Village Center districts are permitted, provided the following uses are not permitted: auction house; lumber yard; mobile home sales; boat sales and service; farm equipment sales and service; carpentry, electric, plumbing, welding, printing and upholstering establishments; contractors, fencing, pool and siding; agricultural products and processing; bottling plant; stone monument processing and sales; recycling center; animal auction sales; racetrack; and solid waste transfer stations. Multi-use buildings, such as high-rise apartment buildings with retail/service establishments on the lower floor(s) are encouraged.
- (3) General, professional, service and other office uses.
- (4) **Civic/Institution and Cultural:** Libraries, meeting halls, fire and rescue stations, post offices, government buildings, civic parks, memorials, amphitheatres, bandstands, museums and similar facilities and uses.

(V) *Land Use Mixed Determination*

- (A) There shall be no required proportionate mix of permitted land use within a development in this zone unless the Board of County Commissioners so determines during the Phase I approval process. A development in this district may be approved with any or all of the permitted land uses described above but multiple land uses are not required unless the area in which development is proposed lacks appropriate existing or planned uses to support the proposed TOD development as determined by the Board of County Commissioners. In any situation, preference shall be given to high-density residential use with support commercial/office use.
- (B) Open space dedication or preservation shall be limited within the TOD district to reflect the overriding objectives of the TOD district. Appropriate recreational (passive and/or active) facilities shall be provided within the structures as determined by the Planning Commission with consideration given to the uses proposed.

- (C) Vertical and horizontal integration of uses is encouraged, with preference given to vertical integration.
- (D) Civic/Institution and Cultural uses shall not be permitted in stand alone buildings unless it is determined by the Planning Commission at the Phase II stage that the most efficient and appropriate development for a particular parcel is achieved by permitting a specific Civic/Institution and Cultural use in a stand alone building.

(VI) *General Requirements*

- (A) In order to achieve design excellence, sound planning and the achievement of the goals and objectives of this district, the applicant may propose design criteria and/or dimension requirements that are not in complete conformance with existing zoning and subdivision regulations for the various land uses and zones. The Planning Commission may grant these modifications.
- (B) The location, design and extent of public facilities shall comply with the following requirements:
 - (1) Water and Sewer. All TOD's shall be served by public water and sewer.
 - (2) Transportation. The location, hierarchy and design of roads will be in accordance with the Comprehensive Plan, the County Subdivision Regulations, and the Design Manual. However, flexibility in the application of these regulations will be permitted insofar as those ordinances allow for modifications, and the Planning Commission shall be permitted to grant further modifications for the purpose of achieving the stated objectives of the TOD zone, particularly with an emphasis on pedestrian movements and the de-emphasis on vehicular access and highway commuting. Development plans should emphasize pedestrian and bicycle movements designed and located to encourage use of the MARC Train Station. To the extent reasonable and practicable the pedestrian and bicycle movements should provide for interconnectivity to existing and future development where appropriate and shall connect where such connections are currently available.
 - (3) Ownership and maintenance of public facilities:
 - (a) All water and sewer facilities will be owned by the County.

(b) Streets will be owned and maintained by the County if consistent with County policy. Streets or parking areas not dedicated to and accepted by the Board of County Commissioners shall be maintained by a property owners association, condominium association or similar organization or by the developer.

(c) Open space, stormwater management facilities and recreation areas will be owned and maintained by the County if consistent with County policy. Those not dedicated to and accepted by the Board of County Commissioners shall be maintained by a property owners' association, condominium association or similar organization, or by the developer if developer retains ownership of the multifamily buildings. The covenants establishing the same shall be subject to the approval of the Planning Commission or other appropriate County authority. To the extent it is in the best interest of the County, the Board of County Commissioners will have the option of accepting dedication of some or all of such facilities.

- (4) **Parking.** The Planning Commission shall have the authority to reduce the required parking for townhouse units and multifamily units to one and one half (1 1/2) parking spaces per unit if, based on the proximity and distance of the proposed residential units from a MARC train station the Planning Commission determines that additional parking is not warranted.

(VII) *Review and Approval of TOD District*

- (A) **Phase I: Concept Plan.** The developer will provide sufficient information for the Board of County Commissioners to approve or disapprove the floating zone on the property and the overall concept of the project and to establish the land use mix of the project.

- (1) The TOD district will be approved if it satisfies the objectives and requirements set forth in subsections (I) through (VI) of this section. The applicant has the burden of proof on all issues.

- (2) **Application.** The application submitted must include fifteen (15) copies of each of the following:

- (a) A map of the applicant's entire holding at a convenient scale.

- (b) A vicinity map at a scale of one (1) inch equals two thousand (2,000) feet or more to the inch, indicating the location of the property with respect to surrounding property and streets. The map will show all streets and highways within two thousand (2,000) feet of the applicant's property.
- (c) A topographic map of the property, at a minimum of five foot contour intervals, unless otherwise specified, showing the existing surface of the land and the location of natural features, such as streams, rock outcrops and wooded areas.
- (d) A generalized overall land use plan at 1" = 100' scale, showing the type, location, acreage, and density of all proposed land uses as well as the general street layout and circulation pattern.
- (e) A concept plan at 1" = 50' scale showing the location of all proposed lot lines; the location, proposed use, size and height of all existing and proposed buildings; the location of all roads, parking lots, truck loading areas and access and egress drives; and the location and type of all public, recreational or cultural facilities and areas.
- (f) A phasing schedule describing the timing and sequence of development.
- (g) A justification statement addressing the following:
 - 1. Realization of the purpose, goals and objectives of the TOD district.
 - 2. Integration and relationship of uses within the project and with existing uses in the neighborhood of the project. For purposes of this section "neighborhood" shall be defined as the area encompassing a 1320-foot (1/4 mile) radius around the MARC station area.
 - 3. Long-term implications on local development patterns, facilities and services.
 - 4. The timing of the construction of the TOD project as it relates to the provision of necessary facilities and services.

5. Availability and suitability of pedestrian and vehicular access, with emphasis on pedestrian access between the residential component of the proposal and the MARC Train Station.
 6. Water and sewer facilities and capacity availability, and any proposal to supply them.
 7. Preservation and integration into the project of any existing historic structures on the development site.
 8. Consistency with goals and objectives of the Frederick County Comprehensive Plan. Consistency with any particular land use designation as depicted on the Comprehensive Plan is not required. The County Commissioners must find that the proposed development, notwithstanding its particular land use designation, meets the goals and objectives of the Comprehensive Plan's stated policy of achieving transit oriented development around existing or proposed transit stops which emphasizes the use of public mass transportation and provides options for residents to travel by mass transit, bicycle or foot as well as automobile.
- (h) The Planning Commission or Board of County Commissioners shall require the use of architectural renderings and other visualization tools to demonstrate that the appearance, size, scale, and type of structures, building materials, streetscapes, civic spaces, and other elements of the site planning are appropriate for the particular location within the TOD district. The Board of County Commissioners may add conditions to its approval of the development requiring architectural review and any such condition including approval of architectural plans shall be binding through the Execution Phase.
- (3) No less than sixty (60) days after submission, the Planning Commission shall review the Phase I proposal at a public hearing. All requirements for floating zone map amendments, as set forth in Article II, Division 3, shall be met. The Planning Commission shall then make a recommendation to the Board of County Commissioners as to approval or disapproval of the development application.

- (4) Upon receipt of the Planning Commission recommendation the Board of County Commissioners shall hold a public hearing on the proposal. The Board of County Commissioners shall then determine the feasibility and desirability of the project concept and shall approve or disapprove the application of the TOD district floating zone, and if approved, set maximum permitted land use mix percentages for each parcel or parcels within the district boundaries.
 - (5) If the execution phase, as provided in subsection B below, has not commenced within three (3) years of approval of concept plan, the Board of County Commissioners shall review the concept plan to determine if the proposed development is still an appropriate use for the property. The Board of County Commissioners may then grant an extension of the approval and shall have the authority to remove the floating zone and have the site revert to its prior zoning classification.
- (B) Phase II: Execution Phase. This guides the project through the customary subdivision and site plan process. Before applying for execution phase, the land encompassing the TOD district shall be classified at least W-4, S-4 on the Frederick County Water and Sewerage Plan.
- (1) If subdivision is proposed, preliminary and final platting in accordance with the county subdivision regulations is required.
 - (2) Site plan review shall be in accordance with Sections 1-19-411, 1-19-412 and 1-19-413 of the Zoning Ordinance.
 - (3) Adequate Public Facilities Ordinance (APFO) review will occur during the Phase II execution phase.
 - (4) Any existing structures or features on the site which are, or are eligible, to be placed on the National Register of Historic Places or other recognized historic site inventory must be identified. If the property proposed for development contains any existing structures or features on the site which are, or are eligible, to be placed on the National Register of Historic Places or other recognized historic site inventory, a historic resources mitigation plan must be submitted for approval by the Planning Commission. The historic resources mitigation plan shall include reasonable measures for the mitigation of adverse effects to such structures or features within the area of proposed disturbance of the site plan area if such structures or features are proposed for retention or if not retained, prior to

demolition field recording and photographic documentation of the such structures or features.

(VIII) *Appeals*

- (A) Any person aggrieved by a final decision of the Planning Commission or the Board of County Commissioners pursuant to this section may appeal to the Circuit Court pursuant to the Rule 7-201 and following of Maryland Rules of Procedure. The decision of the Circuit Court may be appealed to the Court of Special Appeals, or, upon certiorari, to the Court of Appeals of Maryland in accordance with Maryland Rules of Procedure.
- (B) The Board of County Commissioners may file a responsive pleading and be a party to or take an appeal to the Circuit Court of the County, to the Court of Special Appeals of Maryland or, upon certiorari, to the Court of Appeals of Maryland of any decision made under this section.

AND BE IT FURTHER ENACTED AND ORDAINED that this Ordinance shall take effect on November 30, 2006.

The undersigned hereby certifies that this Ordinance was approved and adopted on the 14th day of November, 2006.

ATTEST:


County Manager

BOARD OF COUNTY COMMISSIONERS OF
FREDERICK COUNTY, MARYLAND

BY: 
John L. Thompson, Jr., President

MIC 11/30/06